

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MITRE SPORTS INTERNATIONAL LIMITED,

Plaintiff,

-against-

HOME BOX OFFICE, INC.,

Defendant.

ECF

Case No. 08 CIV 9117 (GBD)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF HEARST CORPORATION, ABC, INC., ADVANCE PUBLICATIONS, INC., A&E TELEVISION NETWORKS, LLC, THE ASSOCIATED PRESS, CBS BROADCASTING, INC., THE DAILY BEAST COMPANY LLC, DAILY NEWS, L.P., DOW JONES & COMPANY, INC., THE E.W. SCRIPPS COMPANY, FIRST LOOK MEDIA, INC., FOX NEWS NETWORK, LLC, GANNETT CO., INC., GAWKER MEDIA, GUARDIAN US, MEDIANEWS GROUP, INC., D/B/A DIGITAL FIRST MEDIA, MEREDITH CORPORATION, NATIONAL PUBLIC RADIO, INC., NBCUNIVERSAL MEDIA, LLC, NEWS CORPORATION, THE NEW YORK TIMES COMPANY, NORTH JERSEY MEDIA GROUP INC., NYP HOLDINGS, INC., THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, REUTERS AMERICA LLC, TRIBUNE COMPANY, AND VICE MEDIA, INC. FOR
LEAVE TO FILE MEMORANDUM AS *AMICI CURIAE***

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The 27 press and media organizations listed in addendum A (hereinafter, “Media *Amici*”)¹ respectfully move for leave to file the *amicus* Memorandum of Law annexed as Exhibit A to the Declaration of Kristina E. Findikyan, in support of defendant Home Box Office, Inc.’s motion for certification pursuant to 28 U.S.C. § 1292(b) of this Court’s May 16, 2014 Memorandum Decision and Order (ECF No. 298). Defendant Home Box Office, Inc. consents to the filing of Media *Amici*’s Memorandum of Law. Plaintiff Mitre opposes it.

INTERESTS OF MEDIA *AMICI*

Media *Amici* are 27 leading news organizations and a trade organization whose journalists gather and disseminate news and information across the country, including in New York and the Second Circuit. For fifty years since the Supreme Court’s seminal decision *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), Media *Amici* and their journalists have been afforded significant First Amendment protection in reporting about public officials and public figures.

This Court’s ruling that Mitre is a private figure, which Media *Amici* respectfully submit is a marked departure from well-established law and the widespread understanding of journalists and media lawyers of what constitutes a public figure, has sown uncertainty about the application of the actual malice standard to news stories of great public importance involving companies that are household names, leaders in their industries, and central players in the resolution of those public issues.

As major media organizations, Media *Amici* are uniquely situated to highlight the immediate impact of this Court’s ruling on how journalists, and particularly investigative and

¹ Corporate disclosure statements for each *amicus* are set forth in an addendum to this brief.

financial journalists who have covered corporate abuse and misconduct by some of the world's largest and most powerful institutions here in this District, could well be impeded in publishing information on matters of significant public importance and interest.

ARGUMENT

MEDIA *AMICI*'S MOTION FOR LEAVE TO FILE A MEMORANDUM OF LAW AS *AMICI CURIAE* SHOULD BE GRANTED

A district court has “firm discretion” to allow an *amicus* brief. *C&A Carbone, Inc. v. County of Rockland, N.Y.*, No. 08-cv-6459-ER, 2014 WL 1202699, at *3 (S.D.N.Y. Mar. 24, 2014) (quoting *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, No. 12 CIV. 7935 ALC, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014) (citation omitted); *see also Concerned Area Residents for the Env't v. Southview Farm*, 834 F. Supp. 1410, 1413 (W.D.N.Y. 1993) (“District courts have broad discretion in deciding whether to accept *amicus* briefs.”). An *amicus* brief should be allowed when “the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *C&A Carbone*, 2014 WL 1202699, at *3-4 (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (citations omitted)).

Media *Amici*'s perspective on the Order's potential impact as set forth in the accompanying memorandum is outside the four corners of this case and beyond the arguments set forth by the parties. The Order's departure from well-established public figure jurisprudence threatens to have a significant effect on journalists here in New York whose coverage of corporate misconduct, insider trading and Wall Street schemes have been some of the biggest stories of our time.

CONCLUSION

For these reasons, Media *Amici* respectfully request that this Court grant their motion for leave to file the *amicus* memorandum of law attached as Exhibit A to the Findikyan Declaration.

Respectfully submitted,

Dated: June 2, 2014

/s/ Jonathan R. Donnellan

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ADDENDUM A

ABC, Inc. has the following publicly held corporate parent: The Walt Disney Company.

Advance Publications, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

A&E Television Networks, LLC ("AETN") is a Delaware LLC and is owned by Hearst Communications, Inc., Disney/ABC International Television, Inc., and NBC A&E Holding, Inc.

The **Associated Press** is a nonprofit news cooperative. AP has no parent corporation and no publicly held corporation owns 10% or more of its stock.

CBS Broadcasting Inc. is a wholly-owned subsidiary of CBS Corporation, which is a publicly-traded company.

The Daily Beast Company LLC certifies that the Sidney Harman Trust and TDB Holdings, Inc. are the parents of The Daily Beast. TDB Holdings, Inc. is a subsidiary of IAC/InterActiveCorp ("IAC"), a publicly traded company. IAC holds a controlling interest in The Daily Beast.

Daily News, L.P. is a limited partnership, the general partner of which is New DN Company, a privately-held corporation. No publicly-held corporation holds an interest of 10% or more in Daily News, L.P.

Dow Jones & Company, Inc. is a Delaware corporation with its principal place of business in New York. News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones. Ruby Newco, LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company directly owns 10% or more of the stock of Dow Jones.

The E.W. Scripps Company has no parent company and no publicly held corporation owned 10% or more of its stock.

First Look Media, Inc. is a non-profit non-stock corporation organized under the laws of Delaware. No publicly-held corporation holds an interest of 10% or more in First Look Media, Inc.

Fox News Network, LLC is wholly owned by Fox Television Stations, Inc., which is wholly owned by the publicly traded Twenty-First Century Fox, Inc. No other publicly held corporation owns ten percent or more of Fox News.

Gannett Co., Inc. has no parent corporation and no publicly-held company owns 10% or more of Gannett stock.

The privately held **Gawker Media** is wholly owned by privately held Gawker Media Group, Inc. No publicly-held corporation holds an interest of 10% or more in Gawker Media.

Guardian US is a privately held company that has no publicly traded parents, subsidiaries or affiliates, and no publicly traded company owns 5% or more of its parent.

Hearst Corporation is privately held and no publicly held corporation owns 10% or more of Hearst Corporation.

There is no publicly traded entity has more than 10 percent of **MediaNews Group, Inc., d/b/a Digital First Media** stock.

Meredith Corporation is a publicly held corporation, with no parent company.

National Public Radio, Inc. is a privately supported, not-for-profit membership organization that has no parent company and issues no stock.

NBCUniversal Media, LLC is indirectly owned by Comcast Corporation, a publicly held corporation.

News Corporation has no parent company and no publicly held company owns 10% or more of its shares.

The New York Times Company has no parent company and no publicly held corporation owns 10 percent or more of its stock. None of its affiliates has any publicly traded parent except The New York Times Company.

North Jersey Media Group Inc. ("NJMG") is a privately held company owned solely by Macromedia Incorporated, also a privately held company.

NYP Holdings, Inc. is a Delaware corporation, with its principal place of business in New York, and is the publisher of the New York Post. News Corporation, a publicly held company, is the parent of NYP Holdings, Inc. News Corporation has no parent company and no publicly held company owns 10 percent or more of its shares.

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

Reuters America LLC is an indirect wholly owned subsidiary of Thomson Reuters Corporation, a publicly held company. No publicly held company holds 10% or more of the stock of Thomson Reuters Corporation.

Tribune Company is privately owned and has no parent company

Vice Media Inc. is a corporation registered in the State of Delaware. Vice Media Inc. certifies that Vice Holding Inc., a privately-held corporation registered in the State of Delaware, is its parent company and no public company holds more than 10% of Vice Holding, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing to be served on all counsel of record, this 2nd day of June, 2014, by operation of the Court's CM/ECF electronic filing system.

/s/ Kristina E. Findikyan

Kristina E. Findikyan